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November 18, 2009

Via HAND DELIVERY

Chief, Section of Administration,  
Office of Proceedings  
Surface Transportation Board  
395 E Street, S.W.  
Washington, DC 20423

ENTERED  
Office of Proceedings  
NOV 18 2009  
Part of  
Public Record

**Re: Finance Docket No. 35319, Old Augusta Railroad, LLC—Lease and  
Operation Exemption—KM Railways, LLC**

To Whom It May Concern:

Enclosed for filing in the above-captioned docket are the original plus ten copies of a Notice of Exemption by Old Augusta Railroad, LLC. Also enclosed is a check for the filing fee of \$ 1,800.00 and a CD containing the Notice in Word format and PDF format. An additional 20 copies of the relevant maps are also included.

Please date stamp the additional copy of this Notice and return it with our messenger.

If you have any questions, please feel free to contact us.

Regards,

David Coburn (cc)

David H. Coburn

**FILED**

NOV 18 2009

**SURFACE  
TRANSPORTATION BOARD**

Enclosures

**FEE RECEIVED**

NOV 18 2009

**SURFACE  
TRANSPORTATION BOARD**

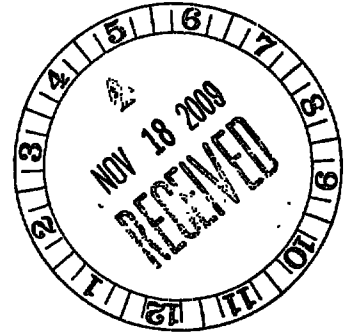
BEFORE THE  
SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 35319

OLD AUGUSTA RAILROAD, LLC –  
LEASE AND OPERATION EXEMPTION –  
KM RAILWAYS, LLC

VERIFIED NOTICE OF EXEMPTION  
PURSUANT TO 49 C.F.R. § 1150.41

226023



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David H. Coburn  
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dcoburn@steptoe.com  
202-429-8063

Attorney for Old Augusta Railroad, LLC

Dated: November 18, 2009

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**STB Finance Docket No. 35319**

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**OLD AUGUSTA RAILROAD, LLC –  
LEASE AND OPERATION EXEMPTION –  
KM RAILWAYS, LLC**

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**VERIFIED NOTICE OF EXEMPTION  
PURSUANT TO 49 C.F.R. § 1150.41(a)**

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Pursuant to the provisions of 49 U.S.C. § 10502 and 49 C.F.R. § 1150.41(b), Old Augusta Railroad, LLC (“OAR”), a Class III rail carrier, files this Verified Notice of Exemption from the requirements of 49 U.S.C. § 10902 for OAR to lease a line of railroad from KM Railways, LLC (“KMR”). KMR is a newly-created Class III railroad. The line at issue consists of 2.5 miles of rail track in Perry County, Mississippi (“the Line”).

OAR and KMR have entered into a Lease Agreement that will be effective as of the date that the Asset Purchase Agreement is consummated whereby OAR is leasing the Line from KMR in order to operate the Line.

In support of this Notice of Exemption, OAR submits the following information as required by 49 C.F.R. § 1150.43:

**Name and Address of Applicant: 49 C.F.R. § 1150.43(a)**

The full name and address of the rail carrier applicant is as follows:

Old Augusta Railroad, LLC  
P.O. Box 329  
Buck Creek Road  
New Augusta, MS 39462  
Attn: Al Fordham  
(601) 964-7318

**Applicant's Representative: 49 C.F.R. § 1150.43(b)**

Any questions concerning this Notice should be sent to OAR's representative at the following address:

David H. Coburn  
Steptoe & Johnson LLP  
1330 Connecticut Avenue, N.W.  
Washington, DC 20036  
dcoburn@steptoe.com  
202-429-8063

**Statement Concerning Agreement: 49 C.F.R. § 1150.43(c)**

On November 18, 2009, KMR executed an Asset Purchase Agreement with OAR to acquire, among other things, certain of the assets, including the track, over which the OAR operates. KMR has entered into a Lease Agreement with OAR under which the Line will be leased to, and operated by, OAR.

**Operation of the Property: 49 C.F.R. § 1150.43(d)**

The Line was formerly owned and operated by OAR. After consummation of the Asset Purchase Agreement, KMR will own the Line. A Notice of Exemption is being simultaneously filed with the Board with respect to the sale of the Line to KMR in STB Finance Docket No. 35321. Pursuant to the Lease Agreement, OAR will lease and operate the Line, providing rail common carrier service over KMR's 2.5 miles of track.

**Summary of the Transaction: 49 C.F.R. § 1150.43(e)**

1. The name and address of the railroad transferring the subject property:

KM Railways, LLC  
4111 East 37<sup>th</sup> Street North  
Wichita, KS 67220

2. Subject to obtaining the necessary regulatory approvals, the proposed schedule for consummation of the sale and lease transactions is on or after December 18, 2009.

3. The Line that OAR is leasing from KMR extends approximately 2.5 miles from New Augusta, Mississippi (Station No. FSAC 10) to Augusta, Mississippi (Station No. FSAC 20).

There are no branch lines and no mile posts. The OAR transports freight between a paper mill and a Canadian National Railway line. *See Old Augusta R.R., LLC—Acquisition & Operation Exemption—Assets of Old Augusta R.R. Co.*, STB Finance Docket No. 34493 (served Apr. 21, 2004). Pursuant to a November 18, 2009 Asset Purchase Agreement, KMR will acquire certain assets currently owned and operated by OAR. All assets transferred in ownership to KMR will then be leased back to the OAR pursuant to Lease Agreement, and OAR will lease and operate the Line. This transaction is an internal reorganization for corporate purposes.

4. OAR is leasing 2.5 miles of track from KMR and will be operating the Line and all ancillary trackage and property.

**Maps of Subject Property: 49 C.F.R. § 1150.43(f)**

A map of the Line is attached hereto as Exhibit A to this Notice.

**Class III Revenue Certification: 49 C.F.R. §§ 1150.43(g)**

The projected annual revenue of OAR as a result of this transaction will not exceed the annual revenue of a Class III railroad, and will not result in the creation of a Class II or Class I rail carrier that would require processing under 49 C.F.R. § 1150.45. The Applicant's

certification is attached hereto as Exhibit B.

**Interchange Commitments: 49 C.F.R. § 1150.43(h)**

The proposed lease and operation of the 2.5 miles of rail trackage by OAR does not involve any provision or agreement that would limit future interchange with a third-party connecting carrier.

**Historic Preservation:**

Applicant's lease and operation of 2.5 miles of rail trackage from KMR is exempt from historic preservation reporting requirements of 49 C.F.R. § 1105.8(b)(1). The proposed transaction is an internal reorganization for corporate reasons, and there will be no planned change in the operations presently conducted by OAR over the 2.5 miles of rail trackage.

**Environmental Impacts:**

The proposed transaction will not result in any changes in carrier operations. Accordingly, no environmental documentation is required under the criteria of 49 C.F.R. § 1105.6(b)(4) and (c)(2) because the proposed transaction continues rail service on existing tracks and will not cause operating changes that exceed the thresholds in 49 C.F.R. § 1105.7(e)(4) or (5).

**Caption Summary: 49 C.F.R. § 1105.44**

A caption summary of the proposed transaction suitable for publication in the Federal Register is attached hereto as Exhibit C.

Respectfully submitted,

David Coburn (K6)

David H. Coburn  
STEPTOE & JOHNSON LLP  
1330 Connecticut Avenue, N.W.  
Washington, DC 20036  
[dcoburn@steptoe.com](mailto:dcoburn@steptoe.com)  
202-429-8063

Attorney for Old Augusta Railroad, LLC

November 18, 2009

VERIFICATION

State of Georgia        )

County of Fulton       )

Patrick J. Boushka, being duly sworn, deposes and says that he is the President of Old Augusta Railroad, LLC, that he has read the foregoing Notice of Exemption, that he has personal knowledge of the facts asserted therein, and that he certifies the same are true as stated.

Executed on November 17<sup>th</sup>, 2009.

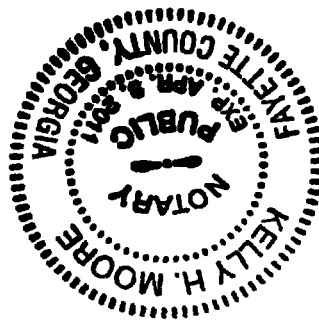
Patrick J. Boushka  
Patrick J. Boushka  
President  
Old Augusta Railroad, LLC

SUBSCRIBED AND SWORN TO

Before me this 17<sup>th</sup> day of November, 2009

Kelly H. Moore  
Notary Public

My commission expires: 04/03/2011



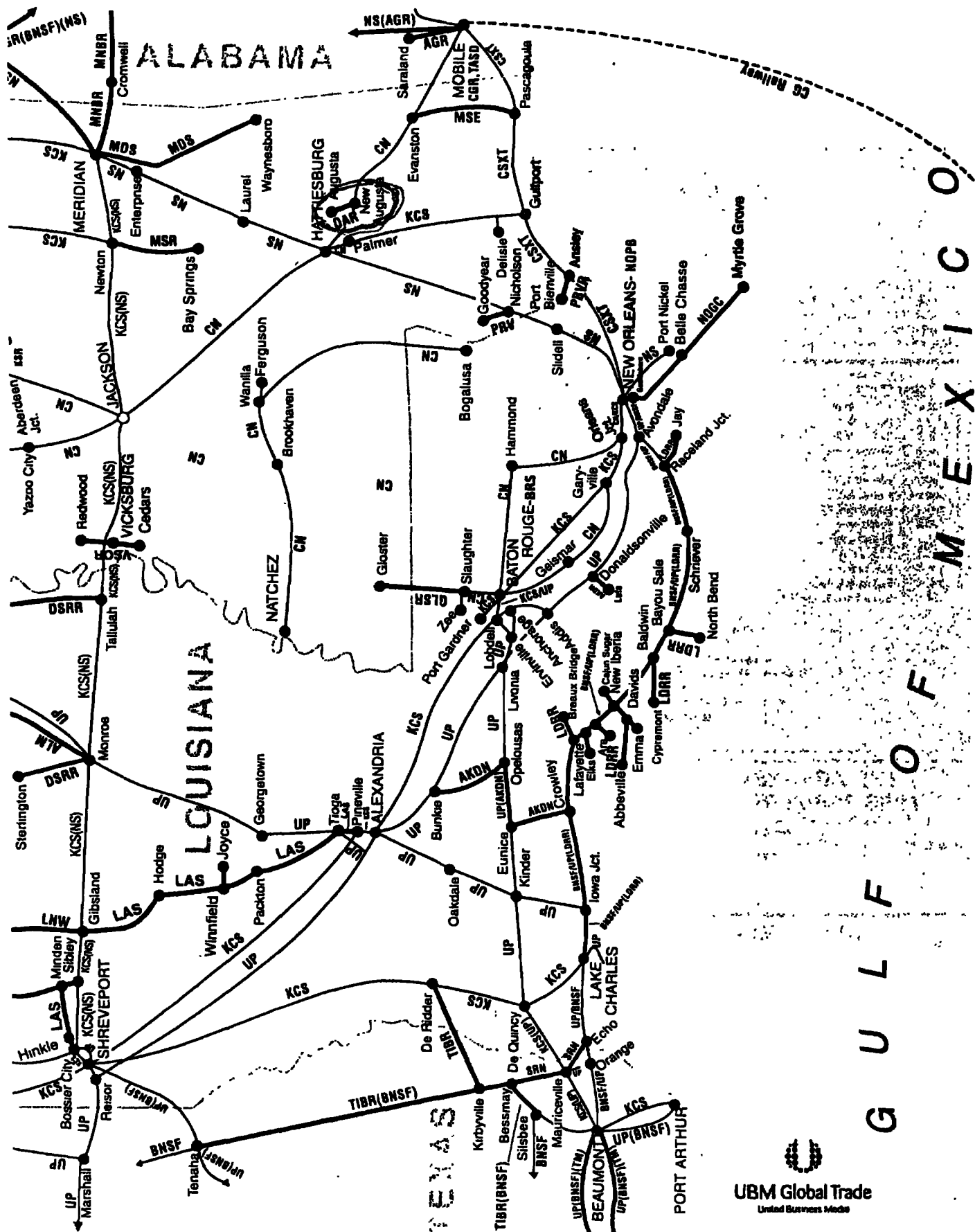
**EXHIBIT A**

**ATTACHED MAP OF RAIL LINE TO BE LEASED  
FROM KM RAILWAYS, LLC**

## KM RAILWAYS, LLC

## REGION 12

AR/LA/MS

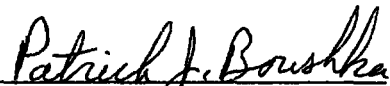


**EXHIBIT B**

**CERTIFICATION**

## CERTIFICATION

Patrick J. Boushka, President of Old Augusta Railroad, LLC, being duly sworn certifies that the projected revenues for Old Augusta Railroad, LLC upon consummation of the proposed lease transaction will not result in creation of a Class I or Class II rail carrier and the projected annual revenue will not exceed \$32,113,449.

  
Patrick J. Boushka  
President  
Old Augusta Railroad, LLC

Dated: November 17, 2009

## **EXHIBIT C**

### **ATTACHED NOTICE OF EXEMPTION**

Surface Transportation Board

*Notice of Exemption*

STB Finance Docket No. 35319

Old Augusta Railroad, LLC – Lease and Operation Exemption – KM Railways, LLC

Old Augusta Railroad, LLC (“OAR”), an existing Class III short line railroad common carrier, has filed a Verified Notice of Exemption under 49 C.F.R. § 1150.41 to lease and operate a 2.5 mile rail line recently purchased by KM Railways, LLC (“KMR”). The rail line extends from Augusta, Mississippi to New Augusta, Mississippi, where it connects to the tracks of Canadian National Railway Company. Under a Lease Agreement with KMR, OAR will operate the rail line on behalf of KMR.

OAR expects to consummate the transaction on or after December 18, 2009.

Pursuant to the Consolidated Appropriations Act, 2008, Pub. L. No. 110-161, § 193, 121 Stat. 1844 (2007), nothing in this decision authorizes the following activities at any solid waste rail transfer facility: collecting, storing or transferring solid waste outside of its original shipping container; or separating or processing solid waste (including baling, crushing, compacting and shredding). The term “solid waste” is defined in § 1004 of the Solid Waste Disposal Act, 42 U.S.C. § 6903.

The notice is filed under 49 C.F.R. § 1150.41. If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. § may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Petitions for stay must be filed no later than \_\_\_\_\_ (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35319,

must be filed with the Surface Transportation Board, Cynthia Brown, Chief, Section of Administration, Office of Proceedings, 395 E Street, S.W., Washington, DC 20423. In addition, a copy of each pleading must be served on OAR's representative, David H. Coburn, Steptoe & Johnson LLP, 1330 Connecticut Ave., Washington, DC 20036; telephone number (202) 429-8063.

Board decisions and notices are available on our website at [www.stb.dot.gov](http://www.stb.dot.gov).

Decided: December \_\_, 2009

By the Board, Rachel D. Campbell, Office of Proceedings

Cynthia Brown

Chief, Section of Administration, Office of Proceedings